

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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PLR-107963-08

Date:

May 16, 2008

Legend

Taxpayer =

Sub =

Contributed Assets =

Date 1 =

Year 1 =

Company Official =

Tax Professionals =

Dear _____ :

This letter responds to a letter dated February 21, 2008, submitted on behalf of Taxpayer, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Additional information was submitted in a letter dated May 15, 2008. Taxpayer is requesting an extension of time to make the deemed sale election under § 1.337(d)-7(c)(1) of the Income Tax Regulations (the "Election") that was required to be filed with its Federal income tax return for the Year 1 taxable year. The information submitted is summarized below.

Taxpayer, a not-for-profit corporation, wholly owns the common stock of Sub, a corporation which elected to be taxed as a real estate investment trust ("REIT") under § 856 of the Internal Revenue Code (the "Code"). In Date 1, Taxpayer contributed the Contributed Assets to Sub.

A deemed sale election under § 1.337(d)-7(c)(1) for Taxpayer to recognize gain and loss upon the contribution of assets to Sub, a REIT, was required to be attached to the Taxpayer's return for the taxable year in which the deemed sale occurred. However, for various reasons, the Election was not filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) of the Code has not expired for Taxpayer's taxable year for which it desires to make the Election, or for any taxable years that would be affected by the Election, had it been timely filed.

Section 1.337(d)-7(a)(1) provides, in part, that if property owned by a C corporation becomes the property of a regulated investment company ("RIC") or a REIT in a conversion transaction (as defined in § 1.337(d)-7(a)(2)(ii)), then § 1374 treatment will apply (as described in § 1.337(d)-7(b)), unless the C corporation elects deemed sale treatment with respect to the conversion transaction.

Section 1.337(d)-7(a)(2)(i) defines a C corporation as a corporation that is not an S corporation, a RIC, or a REIT.

Section 1.337(d)-7(a)(2)(ii) defines, in part, the term conversion transaction to mean the transfer of property owned by a C corporation to a RIC or a REIT.

Section 1.337(d)-7(c)(5) provides that a deemed sale election is made by a C corporation by attaching a statement, as described therein, to its return for the taxable year in which the deemed sale occurs.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when it is established that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.337(d)-7(c)(5)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Taxpayer to file the Election, provided Taxpayer establishes that it acted reasonably and in good faith, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the government.

Information, representations, and affidavits submitted by Taxpayer, Company Official, and Tax Professionals explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Taxpayer reasonably relied on qualified tax professionals who failed to make, or advise Taxpayer to make, the Election. See § 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the affidavits submitted and the representations that have been made, we conclude that Taxpayer has shown that it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3, until 45 days from the date on this letter, for Taxpayer to file the Election.

The above extension of time is conditioned on Taxpayer's tax liability, if any, being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been made timely (taking into account the time value of money).

No opinion is expressed as to Taxpayer's tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the Federal income tax returns involved. In addition, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that Taxpayer's tax liability is lower. Section 301.9100-3(c).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Further, we express no opinion as to the tax consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in the above ruling. Specifically, no opinion is provided concerning Taxpayer's status as a not-for-profit corporation or Sub's qualification as a REIT.

For purposes of granting relief under § 301.9100-3, we relied on certain information and affidavits provided by Taxpayer, Company Official, and Tax Professionals under penalties of perjury. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable still apply.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Corporate)

cc: